



NATIVE COALITION

for MEDICINE LAKE HIGHLANDS DEFENSE

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VIA U.S. MAIL and ELECTRONIC MAIL

April 19, 2004

California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5504
docket@energy.state.ca.us

Re: Docket No. 03-RPS-1078 and Docket No. 02-REN-1038

Members of the California Energy Commission:

The Native Coalition for Medicine Lake Highlands Defense (Native Coalition) writes this letter as a comment to the Renewable Portfolio Standard (RPS) Guidebooks that you will be considering at the April 21, 2004 meeting.

The Native Coalition, which represents Tribes and Native American traditionalists in northern California, has a mission to defend sacred lands. Our mission prompts us to have concerns and specific recommendations regarding the proposed Guidebooks. The Native Coalition has previously participated in numerous hearings relative to CEC actions that would impact Native American spiritual and cultural sites in the sacred Medicine Lake Highlands. We include by reference all our previous comments made to the CEC, and especially the July 10, 2003 letter by Earthjustice Legal Defense Fund written on our behalf and addressed to Ms. Darcy Houcks of your legal staff.

In our previous comments, the CEC will have seen that its actions, particularly through the award of conditional subsidies, have a significant impact on sacred sites and cultural resources that are of vital importance to the Native American way of life and worship.

Previously, the CEC deferred key decisions on the RPS issue because of the potential for irreversible impacts to minority and low-income populations, especially Native American cultures and their sacred lands. The decisions of how the RPS will be implemented will determine *which* projects will be certified, *which* projects will receive substantial financial support, and thus *which* energy projects receive eligibility and funding in order to meet the RPS.

Unfortunately, we do not find that the Guidebooks speak to these concerns. In order to address these serious issues, it is our position that Native Americans would need to have a role in the eligibility process of determining whether projects qualify for certification and for funding under RPS and

Supplemental Energy Payments (SEPs). Criteria need to be included that will preclude projects shown – through applicable NEPA and CEQA review, and National Historic Preservation Act (NHPA) Section 106 process – to have unmitigable impacts on significant cultural resources, sacred lands, as well as environmental justice impacts that cannot be mitigated.

As the Guidebooks, if adopted, condone giving *conditional awards* before completion of applicable NEPA, CEQA and NHPA Section 106 review, the CEC would place itself in a position of committing funds without determining whether projects have the potential of adverse impacts to Native American sacred sites and cultural resources. This goes against the intent of laws which mandate public disclosure and analysis of significant adverse impacts before actions and funding are committed.

We are concerned that Native American cultural and environmental justice concerns could be brushed aside in an effort to achieve an RPS standard at all costs. Since sufficient projects are being proposed, the CEC will have ample opportunity for *discretionary decisions*. In order to guide these discretionary decisions, we strongly urge the responsible agencies to include provisions and criteria that support Native Americans and all minority and/or low-income populations in the protection of cultural ways and sacred lands. These decisions are serious, as they will determine whether Native Americans are free to practice their land-based religion.

We therefore request, with regard to the issue of project eligibility for funding under RPS and Supplemental Energy Payments (SEPs), that criteria be developed that will preclude discriminatory actions against Native American, minority and low-income populations. Eligibility criteria must consider issues of environmental justice, discrimination as defined by Title VI of the Civil Rights Act, protection of sacred lands and religious freedom.

We believe that the RPS standards should provide preferential support to projects *that have documented tangible benefits to communities with a plurality of minority or low-income populations, which means that the projects are void of Environmental Justice Impacts.* We strongly urge that the Guidebooks contain criteria that support renewable projects that do *not* destroy sacred lands or sacred sites of minority and low income populations; a position which would indicate that those in decision-making positions are not discriminating against these populations.

The California Energy Commission is well aware of two controversial geothermal projects that have documented Environmental Justice impacts *that cannot be mitigated*. The Fourmile Hill and the Telephone Flat Geothermal Projects in the sacred Medicine Lake both have *documented* disproportionate impacts to Native Americans, resulting in Environmental Justice Impacts. There are legal provisions (SB 1078 and SB 1038 codified in Public Utilities Code 383.5) that would allow the CEC to implement guidelines for projects that support minority and low-income populations. Nonetheless, the Guidebooks do not contain criteria reflecting these provisions. We consider this to be discriminatory, because the CEC is acting in full knowledge of the consequences of not implementing the above-mentioned legal provisions. In the sacred Medicine Lake Highlands, the consequences are that projects could be funded and certified despite the significant and disproportionate impacts to

a minority low-income population, the Native Americans.¹ Knowing this, the CEC cannot claim that impacts to sacred sites are merely incidental to a project. If the CEC does not implement these provisions, it would be acting in a discriminatory manner and be subject to a Title VI complaint under the Civil Rights Act.

In conclusion, for the above reasons, the Native Coalition recommends the following inclusions into the Guidebooks:

1. Completion of applicable NEPA, CEQA and NHPA Section 106 review, as well as Environmental Justice analysis under Executive Order 12898, before projects can be considered eligible for RPS and SEPs eligibility.
2. Developing criteria that will bar projects from eligibility that have documented significant adverse impacts on Native American sacred sites and cultural resources, and/or environmental justice impacts on minority populations, in order to comply with Title VI of the Civil Rights Act which prohibits discrimination against minorities.
3. Developing a public involvement process that includes consultations with affected Tribes, as well as consultations with the Native American Heritage Commission.

It is clear that adoption of the proposed Guidebooks would stand to impact Native American sacred sites, as well as other minority populations, in serious ways. We therefore appreciate your consideration of these comments and request a written response.

Respectfully submitted,

Michelle Berditschevsky
Executive Secretary

cc: Deborah Sivas, Esq.
Pit River Tribe
Shasta Tribe
Klamath/Modoc Tribe
Native American Heritage Commission
California Council of Tribal Governments
Intertribal Council of California
Seventh Generation
Mount Shasta Bioregional Ecology Center
Department of Energy
SHPO

¹ See July 10, 2003 letter from EarthJustice to Darcy Houcks, CEC legal council as well as numerous transcripts and written comments over the years from the Native Coalition of Medicine Lake Highlands Defense, the Pit River Tribe, and the Mount Shasta Bioregional Ecology Center on numerous CEC funding solicitations.

